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U.S. 1ST CIRCUIT COURT OF APPEALS

Criminal Law & Procedure, Sentencing

US v. Gaffney-Kessell, No. 13-2023

In this case, defendant pleaded guilty to travel with intent to engage in criminal sexual activity, and the court thereafter sentenced defendant, applying a five-level sentence enhancement based on "a pattern of activity involving prohibited sexual conduct," pursuant to U.S.S.G. section 4B1.5. The sentence is affirmed, where: 1) the guidelines' grant of discretion to sentencing judges to consider a defendant's other relevant conduct, including uncharged or unconnected conduct, is consistent with both the Sentencing Reform Act and principles of due process, provided that the underlying facts are found by a preponderance of the evidence; 2) there is no comparable statutory or constitutional impediment to considering a specific category of relevant conduct in applying section 4B1.5(b) to a defendant convicted of a "covered sex crime"; and 3) there was no error, let alone plain error.